MONTANA LEGISLATIVE HISTORY

Chapter 516 1992

Bill H 203 S _____ Original bill & history ✓ C

H. Committee on Corrections Select			S. Committee on Judiciary		
Hearing Date(s)	Jan 28	✓ C	Hearing Date(s)	Mar 18	✓ C
	Feb 11	✓ C		Mar 25	✓ C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

1997 LEGISLATIVE HISTORY

The 1997 Montana Legislature has dramatically changed the nature of the legislative minutes. Specifically, the minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are somewhat fuller in content. Exhibits available from the State Law Library (which may include written statements, attendant information, roll call votes, roll call attendance, a list of public members present, specific action taken on legislative bills, etc.) are included with this request. For information on other exhibits, contact the Montana Historical Society Archives at 444-4774. Exhibits may also be purchased on a CD-ROM from the Montana Legislative Council (444-3064).

Just as in the 1995 legislative session, the House and Senate hearings were recorded. The Historical Society is the depository for the tapes. For information on accessing the tapes, call the archives at 444-4774.

If you have concerns over the format of the 1997 legislative minutes, it is suggested that you contact your state legislators.

HB 203 INTRODUCED BY R. JOHNSON *LC0512 DRAFTER: LANE*

GENERALLY REVISE CHILD ABUSE AND NEGLECT LAWS

1/09	INTRODUCED		
1/09	FIRST READING		
1/09	REFERRED TO CORRECTIONS SELECT COMMITTEE		
1/29	HEARING		
2/14	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/20	2ND READING PASSED AS AMENDED	79	19
2/21	MOTION FAILED TO TAKE FROM 3RD READING & PLACE ON 2ND READING	39	57
2/26	3RD READING PASSED	83	16
	TRANSMITTED TO SENATE		
3/03	FIRST READING		
3/03	REFERRED TO JUDICIARY		
3/19	HEARING		
3/26	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/04	2ND READING CONCURRED	50	0
4/05	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/09	2ND READING AMENDMENTS CONCURRED	97	2
4/11	3RD READING CONCURRED AS AMENDED	81	16
4/20	SIGNED BY SPEAKER		
4/24	SIGNED BY PRESIDENT		
4/25	TRANSMITTED TO GOVERNOR		
5/02	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 516		
	EFFECTIVE DATE: 10/01/97		

HB 204 INTRODUCED BY EWER *LC0640 DRAFTER: BOHYER*

CLARIFY THE DUTIES AND RESPONSIBILITIES OF STATE AGENCY HEADS OR LOCAL GOVERNMENTS REGARDING DESIGNATED AREAS FOR SMOKING AND NONSMOKING IN STATE OR LOCAL GOVERNMENT BUILDINGS

1/09	INTRODUCED
1/09	FIRST READING
1/09	REFERRED TO LOCAL GOVERNMENT
1/23	HEARING
1/23	TABLED IN COMMITTEE
2/27	MISSED DEADLINE FOR 45TH DAY TRANSMITTAL
	DIED IN COMMITTEE

HB 205 INTRODUCED BY R. JOHNSON *LC0670 DRAFTER: CAMPBELL*

ADD HEALTH SERVICES AND HEALTH DEPARTMENT FUNCTIONS TO THE SERVICES A MULTIJURISDICTIONAL SERVICE DISTRICT MAY PROVIDE

1/09	INTRODUCED		
1/09	FIRST READING		
1/09	REFERRED TO LOCAL GOVERNMENT		
1/23	HEARING		
1/29	COMMITTEE REPORT—BILL PASSED		
1/30	2ND READING PASSED	83	17
1/31	3RD READING PASSED	82	15
	TRANSMITTED TO SENATE		
2/03	FIRST READING		
2/03	REFERRED TO LOCAL GOVERNMENT		
3/06	HEARING		
3/07	COMMITTEE REPORT—BILL CONCURRED		

House BILL NO. 203

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CHILD ABUSE AND NEGLECT LAWS; DEFINING BEST INTERESTS OF THE CHILD; PROVIDING FOR A PETITION FOR LONG-TERM LEGAL CUSTODY; PROVIDING FOR A PERMANENCY PLAN HEARING; AMENDING SECTIONS 41-3-102, 41-3-202, 41-3-204, 41-3-303, 41-3-401, 41-3-402, 41-3-403, 41-3-404, 41-3-406, 41-3-607, 41-3-609, 41-4-102, AND 41-5-530, MCA; REPEALING SECTIONS 41-3-410 AND 41-3-603, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-3-102, MCA, is amended to read:

"**41-3-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, or foster parent;

(b) a staff person providing care in a day-care facility;

(c) an employee of a public or private residential institution, facility, home, or agency; or

(d) any other person legally responsible for the child's welfare in a residential setting.

(2) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(3) (a) "Adequate health care" means any medical care, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or guardian, due to religious beliefs, does not provide medical care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent or substantial risk of harm to the child.

(c) The term does not include self-defense, defense of others, or action taken to prevent the child

from self-harm that does not constitute harm to a child's health or welfare.

(4) "Child" or "youth" means any person under 18 years of age.

(5) (a) "Child abuse or neglect" means:

(i) harm to a child's health or welfare; or

(ii) threatened harm to a child's health or welfare.

(b) The term includes harm or threatened harm to a child's health or welfare by the acts or omissions of a person responsible for the child's welfare.

(6) "Department" means the department of public health and human services provided for in 2-15-2201.

(7) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical or mental injury;

(b) commits or allows to be committed sexual abuse or exploitation of the child;

(c) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or person responsible for the child's welfare;

(d) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(e) abandons the child by leaving the child under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future or willfully surrenders physical custody for a period of 6 months and during that period does not manifest to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

(f) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify and locate the ~~parents~~ parent or other person have failed.

(8) "Limited emancipation" means a status conferred on a youth by a court after a dispositional hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

(9) "Mental injury" means an identifiable and substantial impairment of the child's intellectual or psychological functioning.

(10) "Parent" means a biological or adoptive parent or stepparent.

(11) "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-135, 40-6-234, or in part 6 of this chapter.

~~(11)~~(12) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function. The term includes death, permanent or temporary disfigurement, and impairment of a bodily organ or function sustained as a result of excessive corporal punishment.

~~(12)~~(13) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare.

~~(13)~~(14) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

~~(14)~~(15) "Social worker" means an employee of the department who, ~~prior to~~ before the employee's field assignment, has been educated or trained or is receiving education or training in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment. This definition does not apply to any provision of this code that is not in this chapter.

~~(15)~~(16) "Threatened harm to a child's health or welfare" means substantial risk of harm to the child's health or welfare.

(17) "Treatment plan" means a written agreement between the department or court and the parent or guardian that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve other parties, if necessary, for protective services.

~~(16)~~(18) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely

to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection ~~(16)~~ (18), "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children ~~over~~ 1 year of age or older.

~~(17)~~(19) "Youth in need of care" means a youth who is abused or neglected."

Section 2. Section 41-3-202, MCA, is amended to read:

"**41-3-202. Action on reporting.** (1) Upon receipt of a report, as required by 41-3-201, that a child is or has been abused or neglected, a social worker, the county attorney, or a peace officer shall promptly conduct a thorough investigation into the home of the child involved or any other place where the child is present, into the circumstances surrounding the injury of the child, and into all other nonfinancial matters that in the discretion of the investigator are relevant to the investigation. In conducting an investigation under this section, a social worker may not inquire into the financial status of the child's family or of any other person responsible for the child's care, except as necessary to ascertain eligibility for federal assistance programs or to comply with the provisions of ~~41-3-406~~ [section 12].

(2) An initial investigation into the home of the child may be conducted when an anonymous report is received. However, the investigation must within 48 hours develop independent, corroborative, and attributable information in order for the investigation to continue. Without the development of independent,

corroborative, and attributable information, a child may not be removed from the home.

(3) The social worker is responsible for assessing the family and planning for the child. If the child is treated at a medical facility, the social worker, county attorney, or peace officer, consistent with reasonable medical practice, has the right of access to the child for interviews, photographs, and securing physical evidence and has the right of access to relevant hospital and medical records pertaining to the child. If considered appropriate by the social worker, county attorney, or peace officer conducting an interview of the child, an employee of the public school attended by the child involved may participate in any interview of the child if the child is enrolled in kindergarten through 8th grade.

(4) If the child's interview is videotaped, an unedited videotape with audio track must be made available, upon request, for unencumbered review by the family.

(5) (a) If from the investigation it appears that the child suffered abuse or neglect, the department shall provide protective services to the child pursuant to 41-3-301 and may provide protective services to any other child under the same care. The department shall advise the county attorney and the child's family of its investigation.

(b) If from the investigation it appears that the child has not suffered abuse or neglect and the initial report is determined to be unfounded, the department shall destroy all records concerning the report and the investigation. The destruction must be completed within 20 days of the determination that the child has not suffered abuse or neglect.

(6) The investigating social worker, within 60 days of commencing an investigation, shall also furnish a written report to the department and, upon request, to the family. Subject to subsection (5)(b), the department shall maintain a record system containing child abuse and neglect cases.

(7) Any person reporting abuse or neglect that involves acts or omissions on the part of a public or private residential institution, home, facility, or agency is responsible for ensuring that the report is made to the department, its local affiliate, and the county attorney of the county in which the facility is located."

Section 3. Section 41-3-204, MCA, is amended to read:

"**41-3-204. Admissibility and preservation of evidence.** (1) In any proceeding resulting from a report made pursuant to the provisions of this chapter or in any proceeding for which the report or its contents are sought to be introduced into evidence, the report or its contents or any other fact related to the report or to the condition of the child who is the subject of the report may not be excluded on the

ground that the matter is or may be the subject of a privilege related to the examination or treatment of the child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803.

(2) Any person or official required to report under 41-3-201 may take or cause to be taken photographs of the area of trauma visible on a child who is the subject of a report. The cost of photographs taken under this section must be paid by the department.

(3) When any person required to report under 41-3-201 finds visible evidence that a child has suffered abuse or neglect, the person shall include in the report either a written description or photographs of the evidence.

(4) A physician, either in the course of providing medical care to a minor or after consultation with child protective services, the county attorney, or a law enforcement officer, may require x-rays to be taken when, in the physician's professional opinion, there is a need for radiological evidence of suspected abuse or neglect. X-rays may be taken under this section without the permission of the parent or guardian. The cost of the x-rays ordered and taken under this section must be paid by the county child protective service agency.

(5) All written, photographic, or radiological evidence gathered under this section must be sent to the local affiliate of the department at the time that the written confirmation report is sent or as soon after the report is sent as is possible. If a confirmation report is not made, the evidence and the initial report must be destroyed as provided in 41-3-202~~(3)(b)~~(5)(b)."

Section 4. Section 41-3-303, MCA, is amended to read:

"**41-3-303. Guardian ad litem.** (1) In every judicial proceeding, the court shall appoint for any child alleged to be abused or neglected a guardian ad litem. The department or any of its staff may not be appointed as the guardian ad litem in a judicial proceeding under this title. When necessary the guardian ad litem may serve at public expense.

(2) The guardian ad litem is charged with the representation of the child's best interests. The guardian ad litem has the following general duties:

(a) to conduct investigations that the guardian ad litem considers necessary to ascertain the facts constituting the alleged abuse or neglect;

(b) to interview or observe the child who is the subject of the proceeding;

(c) to have access to court, medical, psychological, law enforcement, social services, and school

records pertaining to the child and the child's siblings and parents or custodians;

(d) to make written reports to the court concerning the child's welfare;

(e) to appear and participate in all proceedings to the degree necessary to adequately represent the child and make recommendations to the court concerning the child's welfare; and

(f) to perform other duties as directed by the court."

NEW SECTION. **Section 5. Best interests of the child.** The best interests of the child, as referred to in this chapter, must be determined by considering all relevant factors, including but not limited to:

(1) the wishes of the child's parent or guardian;

(2) the wishes of the child who is 12 years of age or older;

(3) the interaction and interrelationship of the child with the child's parents and siblings and with any other person who may significantly affect the child's best interests;

(4) the mental and physical health of all individuals involved;

(5) the child's needs of home, school, and community;

(6) physical abuse or threat of physical abuse by one parent or guardian against the other parent or guardian or the child; and

(7) chemical dependency, as defined in 53-24-103, or chemical abuse on the part of either parent or guardian.

Section 6. Section 41-3-401, MCA, is amended to read:

"**41-3-401. Abuse and neglect petitions.** (1) The county attorney, attorney general, or an attorney hired by the county is responsible for filing all petitions alleging abuse or neglect. The county attorney, the attorney general, or an attorney hired by the department with the written consent of the county attorney or the attorney general may require all state, county, and municipal agencies, including law enforcement agencies, to conduct the investigations and furnish reports that may be necessary.

(2) Upon receipt of a petition, the court shall set a date for an adjudicatory hearing on the petition. The petitions must be given preference by the court in setting hearing dates.

(3) A petition alleging abuse or neglect is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure apply except as modified in this part. Proceedings under a petition are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, must be served personally with a copy of the petition and summons at least 5 days ~~prior to~~ before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication in the manner provided by the Montana Rules of Civil Procedure for other types of proceedings.

(5) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party when in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian the court shall appoint one.

(7) Any person interested in any cause under this chapter has the right to appear.

(8) Except when the proceeding is instituted or commenced at the request of the department of public health and human services, a citation must be issued and served upon a representative of the department ~~prior to~~ before the court hearing.

(9) The petition must:

(a) state the nature of the alleged abuse or neglect;

(b) state the full name, age, and address of the youth and the name and address of the youth's parents or guardian or person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

(a) temporary investigative authority and protective services, as provided in 41-3-402;

(b) temporary legal custody, as provided in 41-3-406;

(c) long-term legal custody, as provided in [section 13];

~~(c)~~(d) termination of the parent-child legal relationship and permanent legal custody with the right to consent to adoption, as provided in 41-3-607;

~~(d)~~(e) any combination of the provisions of subsections (10)(a) through ~~(10)(c)~~ (10)(d) or any other relief that may be required for the best ~~interest~~ interests of the youth.

(11) The court, in an order granting or denying relief, shall make a finding regarding the reasonableness of agency efforts to rehabilitate the family to prevent the child's removal from the home.

~~(11)~~(12) The petition may be modified for different relief at any time within the discretion of the court.

(13) The court may dismiss a petition or provide other sanctions for failure to meet a time requirement set forth in Title 41, chapter 3.

~~(12)~~(14) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party."

Section 7. Section 41-3-402, MCA, is amended to read:

"**41-3-402. Petition for temporary investigative authority and protective services.** (1) In a case in which it appears that a youth is abused or neglected or is in danger of being abused or neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for temporary investigative authority and protective services.

(2) A petition for temporary investigative authority and protective services must state the specific authority requested and the facts establishing probable cause that a youth is abused or neglected or is in danger of being abused or neglected.

(3) The petition for temporary investigative authority and protective services must be supported by an affidavit signed by the county attorney, the attorney general, or an attorney hired by the county or must be supported by a department of public health and human services report stating in detail the facts upon which the request is based.

(4) An order for temporary investigative authority and protective services must be issued for a period not longer than 90 days following the show cause hearing and must be limited to one extension of an additional 90 days unless the petitioner and respondent parent or guardian have consented in writing. Before the expiration of the time provided for in an order for temporary investigative authority and protective services the county attorney, the attorney general, or an attorney hired by the county must file a petition for one of the following:

(a) limited emancipation;

(b) temporary legal custody;

(c) long-term legal custody;

(d) termination of the parent-child legal relationship and permanent legal custody with the right to consent to adoption; or

(e) dismissal.

(5) The court may continue an order for temporary investigative authority pending a hearing on a petition provided for in subsection (4)."

Section 8. Section 41-3-402, MCA, is amended to read:

"**41-3-402. Petition for temporary investigative authority and protective services.** (1) In a case in which it appears that a youth is abused or neglected or is in danger of being abused or neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for temporary investigative authority and protective services.

(2) A petition for temporary investigative authority and protective services must state the specific authority requested and the facts establishing probable cause that a youth is abused or neglected or is in danger of being abused or neglected.

(3) The petition for temporary investigative authority and protective services must be supported by an affidavit signed by the county attorney, the attorney general, or an attorney hired by the county or must be supported by a department of public health and human services report stating in detail the facts upon which the request is based.

(4) An order for temporary investigative authority and protective services must be issued for a period not longer than 45 days following the show cause hearing and must be limited to one extension of an additional 45 days unless the petitioner and respondent parent or guardian have consented in writing. Before the expiration of the time provided for in an order for temporary investigative authority and protective services the county attorney, the attorney general, or an attorney hired by the county must file a petition for one of the following:

(a) limited emancipation;

(b) temporary legal custody;

(c) long-term legal custody;

(d) termination of the parent-child legal relationship and permanent legal custody with the right to consent to adoption; or

(e) dismissal.

(5) The court may continue an order for temporary investigative authority pending a hearing on a petition provided for in subsection (4)."

Section 9. Section 41-3-403, MCA, is amended to read:

"**41-3-403. Order for immediate protection of youth.** (1) (a) Upon the filing of a petition for temporary investigative authority and protective services, the court may issue an order granting relief that may be required for the immediate protection of the youth.

(b) The order, along with the petition and supporting documents, must be served by a peace officer or a representative of the department on the person or persons named in the order. When the youth is placed in a medical facility or protective facility, the department shall notify the parents or parent, guardian, or other person having legal custody of the youth, at the time the placement is made or as soon after placement as possible.

(c) The order must require the person served to comply immediately with the terms of the order or to appear before the court issuing the order on the date specified and show cause why ~~the person has not complied with the order~~ the order for temporary investigative authority and protective services should not have been granted. The show cause hearing must be conducted within 20 days of the issuance of the order by the judge or a master appointed by the judge. The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of the order. Except as otherwise provided in this part, the rules of civil procedure apply. Hearsay evidence of statements made by the affected youth is admissible at the hearing or at a contested case proceeding held pursuant to Title 2, chapter 4, part 6, that results from adverse licensing action taken by the department.

(d) Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary ~~legal~~ physical custody of the youth with the department until further order.

(2) The court may grant the following kinds of relief:

(a) right of entry by a peace officer or department worker;

(b) medical and psychological evaluation of the youth or parents, guardians, or person having physical or legal custody;

(c) requirement that the youth, parents, guardians, or person having physical or legal custody receive counseling services;

(d) placement of the youth in a temporary medical facility or a facility for protection of the youth;

(e) requirement that the parents, guardian, or other person having physical or legal custody furnish services that the court may designate;

(f) inquiry into the financial ability of the parents, guardian, or other person having custody of the

youth to contribute to the costs for the care, custody, and treatment of the youth and requirement of a contribution for those costs pursuant to the requirements of ~~41-3-406(3) through (6)~~ [section 12];

(g) other temporary disposition that may be required in the best ~~interest~~ interests of the youth that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined."

Section 10. Section 41-3-404, MCA, is amended to read:

"**41-3-404. Adjudicatory hearing -- temporary disposition.** (1) In the adjudicatory hearing on a petition under 41-3-401, the court shall determine by a preponderance of the evidence whether the youth is a youth in need of care and ascertain, as far as possible, the cause.

(2) The court shall hear evidence regarding the residence of the youth, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the youth.

(3) In all civil and criminal proceedings relating to abuse or neglect, none of the privileges related to the examination or treatment of the child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803, apply.

(4) (a) If the court determines that the youth is not an abused or neglected child, the petition must be dismissed and any order made pursuant to 41-3-403 must be vacated.

(b) If ~~the court determines that the youth is an abused or neglected child~~ the youth is adjudicated a youth in need of care, the court shall set a date for a dispositional hearing to be conducted within 30 days and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-403(2)."

Section 11. Section 41-3-406, MCA, is amended to read:

"**41-3-406. Dispositional hearing -- ~~contributions by parents or guardians for youth's care~~ temporary legal custody.** (1) If a youth is found to be a youth in need of care under 41-3-404, the court may enter its judgment, making any of the following dispositions to protect the welfare of the youth:

(a) permit the youth to remain with the youth's ~~parents~~ parent or guardian, subject to those

conditions and limitations the court may prescribe;

(b) grant an order of limited emancipation to a youth who is 16 years of age or older as provided in 41-3-408;

(c) transfer temporary legal custody to any of the following:

(i) the department;

(ii) a licensed child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the youth and that is licensed or otherwise authorized by law to receive and provide care of the youth; or

(iii) a relative or other individual who~~, after study~~ is recommended by the department or a licensed child-placing agency designated by the court, and is found by the court to be qualified to receive and care for the youth;

(d) order any party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(e) order further care and treatment as the court considers in the best ~~interest~~ interests of the youth that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined pursuant to [section 12].

(2) An order for temporary legal custody may be in effect for no longer than 6 months. Before the expiration of the order for temporary legal custody the county attorney, the attorney general, or an attorney hired by the county shall petition for one on the following:

(a) an extension of temporary legal custody upon a showing that additional time is necessary for the parent or guardian to successfully complete a treatment plan;

(b) long-term legal custody pursuant to [section 13];

(c) termination of the parent-child legal relationship and permanent legal custody with the right of adoption pursuant to 41-3-607; or

(d) dismissal.

(3) The court may continue an order for temporary legal custody pending a hearing on a petition

provided for in subsection (2).

~~(2) If the youth is transferred to the custody of the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, custody, and treatment of the youth, including the costs of necessary medical, dental, and other health care.~~

~~(3) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (2), the court shall order the youth's parents or guardians to pay an amount based on the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209.~~

~~(4) (a) Except as provided in subsection (4)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for a contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.~~

~~(b) A court-ordered exception from contributions under this section must be in writing and be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds that there is:~~

~~(i) good cause not to require immediate income withholding; or~~

~~(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.~~

~~(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:~~

~~(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and~~

~~(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.~~

~~(d) An alternative arrangement must:~~

~~(i) provide sufficient security to ensure compliance with the arrangement;~~

~~(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and~~

~~(iii) if approved by the court, be entered into the record of the proceeding.~~

~~(5) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (3).~~

~~(6) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.~~

~~(b) The department of public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4.~~"

NEW SECTION. **Section 12. Contributions by parents or guardians for youth's care.** (1) If custody of the youth is transferred to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, custody, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(2) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (1), the court shall order the youth's parent or guardian to pay an amount based on the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209.

(3) (a) Except as provided in subsection (3)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for a contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and must be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds that there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be

provide care of the youth; or

(c) a relative or other individual who is recommended by the department or a licensed child-placing agency designated by the court and is found by the court to be qualified to receive and care for the youth.

(3) The court may terminate long-term legal custody upon petition of the birth parents, transferees of legal custody, or the department, if the court finds that the circumstances of the child or family have substantially changed and the best interests of the child are no longer being served.

NEW SECTION. **Section 14. Permanency plan hearing.** (1) A permanency plan hearing must be held by the court no later than 12 months after the initial order is issued. The permanency plan hearing may be substituted for a hearing that is required in other sections of this part if held within the time limits of that section.

(2) (a) The court shall order that the child be returned to the custody of the child's parent or guardian unless it finds, by a preponderance of the evidence, that returning the child would create a substantial risk or be detrimental to the child's physical or emotional well-being. The failure of a parent or guardian to participate in, comply with, in whole or in part, or to meet the goals of a court approved treatment plan constitutes prima facie evidence that return of the child to that parent or guardian would be detrimental.

(b) In making a determination under this section, the court shall review a report prepared by the department, a report prepared by the child's guardian ad litem, any evidence regarding the efforts and progress demonstrated by the parent or guardian, and the extent to which the parent or guardian cooperated and used the services provided.

(c) The court shall determine whether reasonable services have been offered or provided to the parent or guardian.

(3) If a child is not returned to this parent or guardian at the permanency plan hearing, the court shall:

(a) order the department to develop a permanent plan, and order the county attorney, attorney general, or an attorney hired by the county to petition the court within 30 days after the present hearing for a determination regarding whether termination of parental rights, long-term legal custody, or temporary legal custody for a specified period of time if reunification is the most appropriate final plan for the child; and

based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(4) Upon a showing of a change in the financial ability of the youth's parent or guardian to pay, the court may modify its order for the payment of contributions required under subsection (2).

(5) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4.

NEW SECTION. **Section 13. Petition for long-term legal custody.** (1) The county attorney, attorney general, or an attorney hired by the county may file a petition for long-term legal custody without terminating the parent-child legal relationship when, because of special needs and circumstances, the child should be placed in the custody of a responsible relative or other individual or should continue in foster care on a long-term basis and the child has:

(a) been adjudicated a youth in need of care under 41-3-404; and

(b) reached the age of 12 or substantial reasons exist for making an exception to the age limit.

(2) The court may transfer legal custody to any of the following:

(a) the department;

(b) a licensed child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the youth and that is licensed or otherwise authorized by law to receive and

(b) in its discretion, enter any other order that it determines to be in the best interests of the child.

Section 15. Section 41-3-607, MCA, is amended to read:

"**41-3-607. Petition for termination -- separate hearing -- right to counsel -- no jury trial.** (1) The termination of a parent-child legal relationship may be considered only after the filing of a petition pursuant to 41-3-401 alleging the factual grounds for termination pursuant to 41-3-609. If termination of a parent-child legal relationship is ordered, the court may transfer permanent legal custody of the child, with the right to consent to the child's adoption, to:

(a) the department;

(b) a licensed child-placing agency; or

(c) another individual who has been approved by the department and has received consent for the transfer of custody from the department or agency that has custody of the child.

(2) After a petition for termination of a parent-child relationship is filed, parents must be advised of the right to counsel, and counsel must be appointed in accordance with 41-3-401~~(1)(2)~~.

(3) A guardian ad litem must be appointed to represent the child's best interests in any hearing determining the involuntary termination of the parent-child legal relationship. The guardian ad litem shall continue to represent the child until the child is returned home or placed in an appropriate permanent placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor parent in addition to any counsel requested by the parent.

(4) There is no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship."

Section 16. Section 41-3-609, MCA, is amended to read:

"**41-3-609. Criteria for termination.** (1) The court may order a termination of the parent-child legal relationship upon a finding that any of the following circumstances exist:

(a) the parents have relinquished the child pursuant to 40-6-135;

(b) the child has been abandoned by the parents as set forth in 41-3-102(7)(e);

(c) the parent is unknown and has been unknown for a period of 90 days and reasonable efforts to identify and locate the parent have failed;

(d) the parent is convicted of a felony in which sexual intercourse occurred or is a minor

adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, the child is born; or

~~(c)~~(e) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time~~; or~~.

~~(d) the parent has failed to successfully complete a treatment plan approved by the court within the time periods allowed for the child to be in foster care under 41-3-410 unless it orders other permanent legal custody under 41-3-410.~~

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court must enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making the determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of ~~such~~ a duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child caused by the parent;

(d) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child;

(e) present judicially ordered long-term confinement of the parent;

(f) the injury or death of a ~~sibling~~ child due to proven ~~parental~~ abuse or neglect; and

(g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's

physical, mental, and emotional conditions.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) two medical doctors submit testimony that the parent is so severely mentally ill that the parent cannot assume the role of parent;

(b) the parent is incarcerated for more than 1 year and a treatment plan is not practical considering the incarceration; or

(c) the death or serious bodily injury, as defined in 45-2-101(64), of a ~~sibling~~ child caused by abuse or neglect by the parent has occurred.

~~(5) If a person is convicted of a felony in which sexual intercourse occurred or if a minor is adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, a child is born, the court may terminate the offender's parental rights to the child at any time after the conviction or adjudication.~~"

Section 17. Section 41-4-102, MCA, is amended to read:

"**41-4-102. Financial responsibility.** Financial responsibility for any child placed pursuant to the provisions of the Interstate Compact on the Placement of Children ~~shall~~ must be determined in accordance with the provisions of Article V ~~thereof~~ of that compact in the first instance. However, in the event of partial or complete default of performance ~~thereunder~~ under the compact, the provisions of Title 40, chapter 5, part 1 ~~(Revised Uniform Reciprocal Enforcement of Support Act)~~ (Uniform Interstate Family Support Act), ~~41-3-406~~ [section 12], and 41-3-1122 also may be invoked."

Section 18. Section 41-5-530, MCA, is amended to read:

"**41-5-530. Parental contributions account -- allocation of proceeds.** (1) There is a parental contributions account in the state special revenue fund.

(2) Contributions paid by the parents and guardians of youth under ~~41-3-406~~ [section 12], 41-5-403, 41-5-523, or 41-5-524 must be deposited in the account.

(3) All money in the account, except any amount required to be returned to federal or county sources, is allocated to the department of public health and human services to carry out its duties under 52-1-103."

NEW SECTION. **Section 19. Proceedings subject to Indian Child Welfare Act.** If a proceeding under this chapter involves an Indian child, as defined in the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the proceeding is subject to the Indian Child Welfare Act.

NEW SECTION. **Section 20. Repealer.** Sections 41-3-410 and 41-3-603, MCA, are repealed.

NEW SECTION. **Section 21. Codification instruction.** (1) [Section 19] is intended to be codified as an integral part of Title 41, chapter 3, part 1, and the provisions of Title 41, chapter 3, part 1, apply to [section 19].

(2) [Section 5] is intended to be codified as an integral part of Title 41, chapter 3, part 3, and the provisions of Title 41, chapter 3, part 3, apply to [section 5].

(3) [Sections 12, 13, and 14] are intended to be codified as an integral part of Title 41, chapter 3, part 4, and the provisions of Title 41, chapter 3, part 4, apply to [sections 12, 13, and 14].

NEW SECTION. **Section 22. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective October 1, 1997.

(2) [Section 8] is effective July 1, 1999.

NEW SECTION. **Section 23. Termination.** [Section 7] terminates June 30, 1999.

-END-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

SELECT COMMITTEE ON CORRECTIONS

Call to Order: By CHAIRMAN BERGSAGEL, on January 29, 1997, at 3:10 p.m., in Room 312-2.

ROLL CALL

Members Present:

Rep. Ernest Bergsagel, Chairman (R)
Rep. William T. "Red" Menahan, Vice Chairman (D)
Rep. Gary Feland (R)
Rep. Royal C. Johnson (R)
Rep. Betty Lou Kasten (R)
Rep. Matt McCann (D)
Rep. Daniel W. McGee (R)
Rep. Steve Vick (R)
Rep. Diana E. Wyatt (D)

Members Excused: None

Members Absent: None

Staff Present: Susan Fox, Legislative Services Division
Mike Wingard, Legislative Audit Division
Skip Culver, Legislative Fiscal Division
Meg Angell, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 203 (1/22/97)
HB 100 (1/16/97)
Executive Action: None

HEARING ON HB 203

Opening Statement by Sponsor: **REP. ROYAL JOHNSON** **EXHIBIT 1**
{Tape: 1; Side: A; Approx. Time Count: 1.2; Comments: Rep. Johnson introduced the bill and provided proposed amendments (Exhibit 1).}

JEAN WHITTINGHILL, Court Assessment Program
{Tape: 1; Side: A; Approx. Time Count: 4.9; Comments: Further clarification of the bill.}

SHERRY MEADOR, Court Assessment Program
{Tape: 1; Side: A; Approx. Time Count: 10.5; Comments: Further clarification of the bill.}

HANK HUDSON, Department of Public Health and Human Services
{Tape: 1; Side: A; Approx. Time Count: 24.8; Comments: Further clarification of the bill.}

ANN GILKEY, Department of Public Health and Human Services
{Tape: 1; Side: A; Approx. Time Count: 24.0; Comments: Further clarification of the bill.}

Proponents' Testimony:

SEN. MIGNON WATERMAN, SD 26
{Tape: 1; Side: A; Approx. Time Count: 34.7.}

SEN. MIKE HALLIGAN, SD 34
{Tape: 1; Side: A; Approx. Time Count: 34.8; Comments: Support offered in absentia by Sen. Waterman.}

JEFF SHERLOCK, District Court Judge
{Tape: 1; Side: A; Approx. Time Count: 38.7.}

CAROLYN CLEMENS, Lewis and Clark County Attorney's Office
{Tape: 1; Side: A; Approx. Time Count: 39.5.}

BOB TORRES, Montana Association of Social Workers
{Tape: 1; Side: A; Approx. Time Count: 43.0.}

Opponents' Testimony: **None**

Informational Testimony: **None**

Questions From Committee Members and Responses:
{Tape: 1; Side: B; Approx. Time Count: 0.0.}

Closing by Chairman:
{Tape: 1; Side: B; Approx. Time Count: 4.1; Comments: There was discussion regarding the need for a subcommittee to pull the bill and amendments together for the Committee.}

BREAK

EXHIBIT 1
DATE 1/29/97
HB 203

Amendments to House Bill No. 203
First Reading Copy

Requested by Representative Royal Johnson (DPHHS)
For the Committee on Corrections

Prepared by Susan B. Fox
January 28, 1997

1. Title, lines 5 and 6.
Strike: "PROVIDING" on line 5 through "CUSTODY;" on line 6

2. Title, line 6.
Following: "SECTIONS"
Insert: "40-8-111,"

3. Title, line 7.
Strike: "41-3-402,"

4. Title, line 9.
Strike: "EFFECTIVE" through "TERMINATION"
Insert: "AN APPLICABILITY"

5. Page 1.
Following: the enacting clause
Insert: "

Section 1. Section 40-8-111, MCA, is amended to read:

"**40-8-111. Consent required for adoption.** (1) An adoption of a child may be decreed when there have been filed written consents to adoption executed by:

(a) both parents, if living, or the surviving parent of a child, provided that consent is not required from a father or mother:

(i) adjudged guilty by a court of competent jurisdiction of assault on a child, as provided in 45-5-201; sexual assault on a child, as provided in 45-5-502; sexual intercourse without consent, as provided in 45-5-503, if the victim was a child; incest, as provided in 45-5-507, if the victim was a child; endangering the welfare of children, concerning a child, as provided in 45-5-622; sexual abuse of children, toward a child, as provided in 45-5-625; or ritual abuse of a minor, as provided in 45-5-627;

(ii) who has been judicially deprived of the custody of the child on account of cruelty or neglect toward the child;

(iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned the child, as defined in 41-3-102~~(7)(e)~~(8)(e);

(iv) who has caused the child to be maintained by any public or private children's institution, any charitable agency, or any licensed adoption agency or the department of public health and human services of the state of Montana for a period of 1 year without contributing to the support of the child during that period, if able;

(v) if it is proved to the satisfaction of the court that the father or mother, if able, has not contributed to the support of the child during a period of 1 year before the filing of a petition for adoption; or

(vi) whose parental rights have been judicially terminated;

(b) the legal guardian of the child if both parents are dead or if the rights of the parents have been terminated by judicial proceedings and the guardian has authority by order of the court appointing the guardian to consent to the adoption;

(c) the executive head of an agency if the child has been relinquished for adoption to the agency or if the rights of the parents have been judicially terminated or if both parents are dead and custody of the child has been legally vested in the agency with authority to consent to adoption of the child; or

(d) any person having legal custody of a child by court order if the parental rights of the parents have been judicially terminated. In that case, the court having jurisdiction of the custody of the child shall consent to adoption and a certified copy of its order must be attached to the petition.

(2) The consents required by subsections (1)(a) and (1)(b) must be acknowledged before an officer authorized to take acknowledgments or witnessed by a representative of the department of public health and human services or of an agency or witnessed by a representative of the court.""
Renumber: subsequent sections

6. Page 2.
Following: line 1
Insert: "(4) "Best interests of the child" means the physical, mental, and emotional conditions and needs of the child."
Renumber: subsequent subsections

7. Page 3, line 4.
Following: "40-6-234,"
Insert: "40-8-109, 40-8-117,"
Following: "or"
Insert: "in"

8. Page 4, line 11.
Strike: "(18)"
Insert: "(19)"

9. Page 4, line 27.
Strike: "12"
Insert: "10"

10. Page 7, lines 7 through 18.
Strike: section 5 in its entirety
Renumber: subsequent sections

11. Page 8, line 24.
Strike: subsection (c) in its entirety
Renumber: subsequent subsections

12. Page 8, line 27.

Strike: "(10)(d)"
Insert: "(10)(c)"

13. Page 8, line 28.
Strike: "youth"
Insert: "child"

14. Page 8, lines 29 and 30.
Strike: subsection (11) in its entirety
Renumber: subsequent subsections

15. Page 9, lines 3 and 4.
Strike: subsection (13) in its entirety
Renumber: subsequent subsections

16. Page 9, line 8 through page 10, line 30.
Strike: sections 7 and 8 in their entirety
Renumber: subsequent sections

17. Page 11.
Following: line 20
Insert: "(2) In an order granting or denying relief, the court shall make a finding regarding the reasonableness of agency efforts to rehabilitate the family to prevent the child's removal from the home."
Renumber: subsequent subsections

18. Page 12, line 2.
Strike: "12"
Insert: "10"

19. Page 12.
Following: line 6
Insert: "(4) An order for temporary investigative authority and protective services may not be issued for a period longer than 90 days following the show cause hearing and must be limited to one extension of 90 days. Before the expiration of the time provided for in an order for temporary investigative authority and protective services, the county attorney, the attorney general, or an attorney hired by the county shall file a petition for one of the following:
(a) limited emancipation;
(b) temporary legal custody;
(c) termination of the parent-child legal relationship and permanent legal custody with the right to consent to adoption; or
(d) dismissal.
(5) Notwithstanding the above time limits, the court may continue an order for temporary investigative authority pending a hearing on a petition provided for in subsection (4).
(6) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

20. Page 12, line 24.

Strike: "(2)"
Insert: "(3)"

21. Page 13, line 17.
Strike: "youth"
Insert: "child"

22. Page 13, line 20.
Strike: "12"
Insert: "10"

23. Page 13.
Following: line 20
Insert: "(2) To grant temporary legal custody, the court shall make a finding that:

(a) returning the child to the child's parent or guardian would create a substantial risk of harm to the child or would be detrimental to the child's physical or emotional well-being; and

(b) reasonable services have been provided to the parent or guardian to prevent the removal of the child from the home.

(3) In making a finding regarding the risk of harm to the child or regarding detriment to the child, failure of the child's parent or guardian to participate in, to comply with, in whole or in part, or to meet the goals of a court-ordered treatment plan constitutes prima facie evidence that return of the child to the parent or guardian would be detrimental to the child's physical or emotional well-being."
Renumber: subsequent subsections

24. Page 13, line 26.
Strike: subsection (b) in its entirety
Renumber: subsequent subsections

25. Page 14, line 1.
Strike: "(2)"
Insert: "(4)"

26. Page 14.
Following: line 1
Insert: "(5) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

27. Page 16, line 20 through page 17, line 6.
Strike: section 13 in its entirety
Renumber: subsequent sections

28. Page 17, line 9.
Following: "issued"
Insert: "unless the proceeding has been dismissed, the child was not removed from the home, or the child has been returned to the child's parent or guardian"

29. Page 17, line 10.

Strike: "substituted for"
Insert: "combined with"

30. Page 17, line 11.
Following: "section."
Insert: "If a permanency plan hearing is combined with another hearing, the requirements of the court related to the disposition of the other hearing must be met in addition to the requirements of this section."

31. Page 17, line 12 through page 18, line 1.
Strike: subsections (2) and (3) in their entirety
Insert: "(2) At least 10 days prior to the permanency plan hearing, the department and the guardian ad litem shall each submit a report regarding the child to the court for review. The report must contain the:

(a) efforts and progress demonstrated by the child's parent or guardian to complete a treatment plan;

(b) extent to which the parent or guardian cooperated and used the services provided;

(c) status of the child, including the child's mental, physical, and emotional health; and

(d) plan for permanency for the child.

(3) If the court finds that the permanency plan is in the best interests of the child, the court shall:

(a) order the department to take whatever steps are necessary to effectuate the terms of the plan and shall order the county attorney, the attorney general, or an attorney hired by the county to petition the court within 30 days after the present hearing for one of the following:

(i) termination of parental rights;

(ii) temporary legal custody, not to exceed 6 months; or

(iii) dismissal; and

(b) in its discretion, enter any other order that it determines to be in the best interests of the child that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(4) If the permanency plan hearing results in an order for a 6-month extension of temporary legal custody, upon the expiration of the temporary legal custody order and the filing of a petition by the department and if the court finds that reunification of the child with the child's parent or guardian is not in the best interests of the child, the court shall order:

(a) termination of parental rights if the applicable requirements to terminate parental rights have been met; or

(b) long-term custody of a child if the evidence demonstrates by a preponderance of the evidence that:

(i) the child has reached 12 years of age;

(ii) the child has been adjudicated a youth in need of care;

(iii) the department has made reasonable efforts to reunite the parent and child, further efforts by the department would likely be unproductive, and reunification of the child with the

parent or guardian would be contrary to the best interests of the child;

(iv) termination of parental rights to the child is not in the child's best interests; and

(v) the child has been in a placement in which the foster parent has committed to the long-term care and to a relationship with the child and it is in the best interests of the child to remain in that placement.

(5) The court may terminate long-term custody upon petition of the birth parents, those to whom legal custody has been transferred, or the department if the court finds that the circumstances of the child or family have substantially changed and the best interests of the child are no longer being served."

32. Page 18, line 27.
Strike: "(7)(e)"
Insert: "(8)(e)"

33. Page 19, line 7.
Strike: "."

34. Page 19, line 10.
Following: "~~41-3-410.~~"
Insert: "; or

(f) the parent has substantially failed to successfully complete or meet the goals of a treatment plan approved by the court and the child has been in an out-of-home placement for a cumulative total period of 1 year or longer."

35. Page 20, lines 21 and 26.
Strike: "12"
Insert: "10"

36. Page 21, lines 7 and 9.
Strike: "19"
Insert: "16"

37. Page 21, lines 10 and 11.
Strike: subsection (2) in its entirety
Renumber: subsequent subsection

38. Page 21, lines 12 and 13.
Strike: "12, 13, and 14"
Insert: "10 and 11"

39. Page 21, lines 15 through 19.
Strike: sections 22 and 23 in their entirety

40. Page 21.
Following: line 19
Insert: "

NEW SECTION. **Section 19. Coordination instruction.** If House Bill No. 163 is passed and approved and if 40-8-109 and 40-8-117 are repealed, a reference to [sections 1 through 156 of House Bill No. 163], the "Montana Adoption Act", should be

substituted for the reference to "40-8-109, 40-8-117" in 41-3-102 under the definition of "parent-child legal relationship".

NEW SECTION. **Section 20. Applicability.** [Sections 1 through 10] apply to proceedings commenced on or after October 1, 1997."

HOUSE OF REPRESENTATIVES

House Select COMMITTEE ON CORRECTIONS

ROLL CALL DATE 1/29/97

NAME	PRESENT	ABSENT	EXCUSED
Rep. Ernest Bergsagel, Chairman	✓		
Rep. "Red" Menahan, Vice Chairman	✓		
Rep. Gary Feland	✓		
Rep. Royal Johnson	✓		
Rep. Betty Lou Kasten	✓		
Rep. Matt McCann	✓		
Rep. Dan McGee	✓		
Rep. Steve Vick	✓		
Rep. Diana Wyatt	✓		

MONTANA HOUSE OF REPRESENTATIVES

[redacted]

DATE 1/29/97

BILL NO. HB 203 SPONSOR(S) R. JOHNSON

TYPE

PROPONENT (P) [redacted] INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
P O I	Gordon Morris		MACo
P O I	J Sherlock	Helena	Ct Assessment Prog.
P O I	S. Meader	Helena	Ct. Assess. Prog.
P O I	J. Whittinghill	Helena	Court Assessment Program
P O I	Tim Kuntz	Helena	MTLA
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PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

Informational Testimony:
DIANA LEIBINGER-KOCH, on behalf of Craig Thomas, Executive Director, Board of Pardons **EXHIBIT 2**
{Tape: 1; Side: A; Approx. Time Count: 14.5.}

MARY FAY, Department of Corrections **EXHIBITS 3 & 4**
{Tape: 1; Side: a; Approx. Time Count: 22.3.}

Questions From Committee Members and Responses:
{Tape: 1; Side: A; Approx. Time Count: 28.0.}

Closing by Sponsor: REP. SAM KITZENBERG
{Tape: 1; Side: A; Approx. Time Count: 38.7.}

BREAK

PRESENTATION ON LEGISLATIVE TRENDS IN JUVENILE JUSTICE

MARY FAIRCHILD, National Conference of State Legislatures **EXHIBITS 5 & 6**
{Tape: 1; Side: A; Approx. Time Count: 42.8; Comments: Ms. Fairchild's presentation continued on Tape 1, Side B.}

QUESTIONS FROM COMMITTEE AND RESPONSES:
{Tape: 1; Side: B; Approx. Time Count: 27.5.}

CONCLUSION OF PRESENTATION:
{Tape: 2; Side: A; Approx. Time Count: .5.}

EXECUTIVE ACTION ON HB 203

Motion: REP. ROYAL JOHNSON MOVED HB 203 DO PASS.
{Tape: 2; Side: A; Approx. Time Count: .6.}

Discussion:
{Tape: 2; Side: A; Approx. Time Count: .7.}

Motion: REP. FELAND MOVED THE AMENDMENTS 020302.asf REQUESTED BY REPRESENTATIVES JOHNSON, KASTEN AND MENAHAN **EXHIBIT 7**
{Tape: 2; Side: A; Approx. Time Count: 34.4.}

Discussion:
{Tape: 2; Side: A; Approx. Time Count: 36.6.}

Question was called.

Vote: ACCEPT AMENDMENTS. Motion carried unanimously, 9-0.
{Tape: 2; Side: A; Approx. Time Count: 41.2.}

MOTION/VOTE: REP. ROYAL JOHNSON MOVED HB 203 DO PASS AS AMENDED. Question was called. Motion carried unanimously, 9-0. *{Tape: 2; Side: A; Approx. Time Count: 41.3.}*

(Note: Chairman Bergsagel will hold the bill until Friday, February 14, to determine whether or not to bring the bill back to the Committee for revised action relative to incorporating information pertaining to a Parental Contribution Sanction.)

EXHIBIT 1
DATE 2/11/97
HB 203

Amendments to House Bill No. 203
First Reading Copy

Requested by Representatives Royal Johnson, Kasten, and Menahan
For the Committee on Corrections

Prepared by Susan B. Fox
February 8, 1996

1. Title, lines 5 and 6.
Strike: "PROVIDING" on line 5 through "CUSTODY;" on line 6

2. Title, line 6.
Following: "SECTIONS"
Insert: "40-8-111,"

3. Title, line 7.
Strike: "41-3-402,"

4. Title, line 9.
Strike: "EFFECTIVE" through "TERMINATION"
Insert: "AN APPLICABILITY"

5. Page 1.
Following: the enacting clause
Insert: "

Section 1. Section 40-8-111, MCA, is amended to read:

"**40-8-111. Consent required for adoption.** (1) An adoption of a child may be decreed when there have been filed written consents to adoption executed by:

(a) both parents, if living, or the surviving parent of a child, provided that consent is not required from a father or mother:

(i) adjudged guilty by a court of competent jurisdiction of assault on a child, as provided in 45-5-201; sexual assault on a child, as provided in 45-5-502; sexual intercourse without consent, as provided in 45-5-503, if the victim was a child; incest, as provided in 45-5-507, if the victim was a child; endangering the welfare of children, concerning a child, as provided in 45-5-622; sexual abuse of children, toward a child, as provided in 45-5-625; or ritual abuse of a minor, as provided in 45-5-627;

(ii) who has been judicially deprived of the custody of the child on account of cruelty or neglect toward the child;

(iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned the child, as defined in 41-3-102~~(7)(e)~~(8)(e);

(iv) who has caused the child to be maintained by any public or private children's institution, any charitable agency, or any licensed adoption agency or the department of public health and human services of the state of Montana for a period of 1 year without contributing to the support of the child during that period, if able;

(v) if it is proved to the satisfaction of the court that

the father or mother, if able, has not contributed to the support of the child during a period of 1 year before the filing of a petition for adoption; or

(vi) whose parental rights have been judicially terminated;

(b) the legal guardian of the child if both parents are dead or if the rights of the parents have been terminated by judicial proceedings and the guardian has authority by order of the court appointing the guardian to consent to the adoption;

(c) the executive head of an agency if the child has been relinquished for adoption to the agency or if the rights of the parents have been judicially terminated or if both parents are dead and custody of the child has been legally vested in the agency with authority to consent to adoption of the child; or

(d) any person having legal custody of a child by court order if the parental rights of the parents have been judicially terminated. In that case, the court having jurisdiction of the custody of the child shall consent to adoption and a certified copy of its order must be attached to the petition.

(2) The consents required by subsections (1)(a) and (1)(b) must be acknowledged before an officer authorized to take acknowledgments or witnessed by a representative of the department of public health and human services or of an agency or witnessed by a representative of the court.""
Renumber: subsequent sections

6. Page 1, line 16.
Following: "foster parent"
Insert: "or an adult who resides in the same home in which the child resides"

7. Page 2.
Following: line 1
Insert: "(4) "Best interests of the child" means the physical, mental, and emotional conditions and needs of the child and any other factor considered by the court to be relevant to the child."
Renumber: subsequent subsections

8. Page 3, line 4.
Following: "40-6-234,"
Insert: "40-8-109, 40-8-117,"
Following: "or"
Strike: "in"

9. Page 3, line 24.
Strike: "or court"

10. Page 3, line 25.
Following: "guardian"
Insert: "or a court order"

11. Page 4, line 11.
Strike: "(18)"
Insert: "(19)"

12. Page 4, line 27.
Strike: "12"
Insert: "10"

13. Page 7, lines 7 through 18.
Strike: section 5 in its entirety
Renumber: subsequent sections

14. Page 7, line 26.
Following: "petition,"
Insert: "except a petition for temporary investigative authority,"

15. Page 8, line 24.
Strike: subsection (c) in its entirety
Renumber: subsequent subsections

16. Page 8, line 27.
Strike: "(10)(d)"
Insert: "(10)(c)"

17. Page 8, line 28.
Strike: "youth"
Insert: "child"

18. Page 8, lines 29 and 30.
Strike: subsection (11) in its entirety
Renumber: subsequent subsections

19. Page 9, lines 3 and 4.
Strike: subsection (13) in its entirety
Renumber: subsequent subsections

20. Page 9, line 8 through page 10, line 30.
Strike: sections 7 and 8 in their entirety
Renumber: subsequent sections

21. Page 11.
Following: line 20
Insert: "(2) In an order granting or denying relief, the court shall make a finding regarding the reasonableness of agency efforts to rehabilitate the family to prevent the child's removal from the home."
Renumber: subsequent subsections

22. Page 12, line 2.
Strike: "12"
Insert: "10"

23. Page 12.
Following: line 6
Insert: "(4) An order for temporary investigative authority and protective services may not be issued for a period longer than 90 days following the show cause hearing and must be limited to one extension of 90 days. Before the expiration

of the time provided for in an order for temporary investigative authority and protective services, the county attorney, the attorney general, or an attorney hired by the county shall file a petition for one of the following:

(a) limited emancipation;

(b) temporary legal custody;

(c) termination of the parent-child legal relationship and permanent legal custody with the right to consent to adoption; or

(d) dismissal.

(5) Notwithstanding the above time limits, the court may continue an order for temporary investigative authority pending a hearing on a petition provided for in subsection (4).

(6) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

24. Page 12, line 24.
Strike: "(2)"
Insert: "(3)"

25. Page 13, line 17.
Strike: "youth"
Insert: "child"

26. Page 13, line 20.
Strike: "12"
Insert: "10"

27. Page 13.
Following: line 20
Insert: "(2) To grant temporary legal custody, the court shall make a finding that:

(a) returning the child to the child's parent or guardian would create a substantial risk of harm to the child or would be detrimental to the child's physical or emotional well-being; and

(b) reasonable services have been provided to the parent or guardian to prevent the removal of the child from the home.

(3) In making a finding regarding the risk of harm to the child or regarding detriment to the child, failure of the child's parent or guardian to participate in, to comply with, in whole or in part, or to meet the goals of a court-ordered treatment plan constitutes prima facie evidence that return of the child to the parent or guardian would be detrimental to the child's physical or emotional well-being."
Renumber: subsequent subsections

28. Page 13, line 26.
Strike: subsection (b) in its entirety
Renumber: subsequent subsections

29. Page 14, line 1.
Strike: "(2)"
Insert: "(4)"

30. Page 14.
Following: line 1
Insert: "(6) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

31. Page 16, line 20 through page 17, line 6.
Strike: section 13 in its entirety
Renumber: subsequent sections

32. Page 17, line 9.
Following: "issued"
Insert: "unless the proceeding has been dismissed, the child was not removed from the home, or the child has been returned to the child's parent or guardian"

33. Page 17, line 10.
Strike: "substituted for"
Insert: "combined with"

34. Page 17, line 11.
Following: "section."
Insert: "If a permanency plan hearing is combined with another hearing, the requirements of the court related to the disposition of the other hearing must be met in addition to the requirements of this section."

35. Page 17, line 12 through page 18, line 1.
Strike: subsections (2) and (3) in their entirety
Insert: "(2) At least 3 days prior to the permanency plan hearing, the department and the guardian ad litem shall each submit a report regarding the child to the court for review. The report must contain the:

(a) efforts and progress demonstrated by the child's parent or guardian to complete a treatment plan;

(b) extent to which the parent or guardian cooperated and used the services provided;

(c) status of the child, including the child's mental, physical, and emotional health; and

(d) plan for permanency for the child.

(3) If the court finds that the permanency plan is in the best interests of the child, the court shall:

(a) order the department to take whatever steps are necessary to effectuate the terms of the plan and shall order the county attorney, the attorney general, or an attorney hired by the county to petition the court within 30 days after the present hearing for one of the following:

(i) termination of parental rights;

(ii) temporary legal custody, not to exceed 6 months; or

(iii) dismissal; and

(b) in its discretion, enter any other order that it determines to be in the best interests of the child that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely

manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(4) If the permanency plan hearing results in an order for a 6-month extension of temporary legal custody, upon the expiration of the temporary legal custody order and the filing of a petition by the department and if the court finds that reunification of the child with the child's parent or guardian is not in the best interests of the child, the court shall order:

(a) termination of parental rights if the applicable requirements to terminate parental rights have been met; or

(b) long-term custody of a child if the evidence demonstrates by a preponderance of the evidence that:

(i) the child has been adjudicated a youth in need of care;

(ii) the department has made reasonable efforts to reunite the parent and child, further efforts by the department would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;

(iii) the child has reached 12 years of age;

(iv) termination of parental rights to the child is not in the child's best interests; and

(v) the child has been in a placement in which the foster parent has committed to the long-term care and to a relationship with the child and it is in the best interests of the child to remain in that placement.

(5) The court may terminate long-term custody upon petition of the birth parents, those to whom legal custody has been transferred, or the department if the court finds that the circumstances of the child or family have substantially changed and the best interests of the child are no longer being served."

36. Page 18, line 27.
Strike: "(7)(e)"
Insert: "(8)(e)"

37. Page 19, line 7.
Strike: "."

38. Page 19, line 10.
Following: "~~41-3-410.~~"
Insert: "; or

(f) the parent has substantially failed to successfully complete or meet the goals of a treatment plan approved by the court and the child has been in an out-of-home placement for a cumulative total period of 1 year or longer."

39. Page 20, lines 21 and 26.
Strike: "12"
Insert: "10"

40. Page 21, lines 7 and 9.
Strike: "19"
Insert: "16"

41. Page 21, lines 10 and 11.
Strike: subsection (2) in its entirety
Renumber: subsequent subsection

42. Page 21, lines 12 and 13.
Strike: "12, 13, and 14"
Insert: "10 and 11"

43. Page 21, lines 15 through 19.
Strike: sections 22 and 23 in their entirety
Insert: "

NEW SECTION. **Section 19. Coordination instruction.** (1) If House Bill No. 163 is passed and approved and if 40-8-109 and 40-8-117 are repealed, a reference to [sections 1 through 156 of House Bill No. 163], the "Montana Adoption Act", should be substituted for the reference to "40-8-109, 40-8-117" in 41-3-102 under the definition of "parent-child legal relationship".

(2) If Senate Bill No. 110 is passed and approved, then 41-3-406 in Senate Bill No. 110 is void and section 10 of this bill must read:

"NEW SECTION. **Section 10. Contributions by parents or guardians for youth's care.** (1) If custody of the youth is transferred to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, custody, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(2) If the court determines that the youth's parent or guardian is financially able to pay a contribution as provided in subsection (1), the court shall order the youth's parent or guardian to pay a specified amount or an amount determined by the department. In either case, the amount must be based on the uniform child support guidelines adopted by the department pursuant to 40-5-209.

(3) A parent's or guardian's liability for contributions begins to accrue from the date the youth is removed from the home and continues until the youth is returned to the parent or guardian, the youth becomes emancipated, or the liability is terminated by order of the court.

(4) (a) A parent or guardian who is ordered to pay a contribution for a youth under this section assigns to the department all rights to a child support order for that youth that are not otherwise assigned under 53-2-613. The assignment of a child support obligation:

(i) is effective for both current and accrued support;

(ii) takes effect on the date the youth is transferred to the custody of the department; and

(iii) remains in effect for as long as the youth lawfully remains in custody of the department and until all arrears that are owed prior to the termination of the department's custody are paid.

(b) The assigned child support obligation is in addition to the parent's or guardian's contribution determined under subsection (2) or (8), if applicable.

(c) The assigned child support obligation may be retained by the department in an amount sufficient to reimburse the costs for the youth's care that remain after the obligation has been satisfied.

(5) (a) Except as provided in subsection (5)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for a contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and must be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds that there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(6) Upon a showing of a change in the financial ability of the youth's parent or guardian to pay, the court may modify its order for the payment of contributions required under subsection (2) or the parent or guardian may apply to the department for an administrative modification provided for in Title 40, chapter 5, part 2. A modification must be based upon the uniform child support guidelines adopted by the department pursuant to 40-5-209.

(7) (a) If the court orders the payment of contributions under this section or the department orders the payment of contributions under subsection (8), the department shall collect and enforce the contribution order pursuant to Title IV-D of the Social Security Act.

(b) The department may collect and enforce a contribution order and an assignment of a child support obligation, if applicable, under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4.

(8) Upon a court order for commitment that does not contain an amount of a contribution or a referral by the court to

determine an amount of a contribution, as provided in subsection (2), the department may determine, establish, and order the youth's parent or guardian to pay a contribution as provided for in subsection (1) using the procedure provided in Title 40, chapter 5, part 2, for establishing a child support order."

NEW SECTION. **Section 20. Applicability.** [Sections 1 through 10] apply to proceedings commenced on or after October 1, 1997."

Questions From Committee Members and Responses: None

Closing by Sponsor: **REP. BARNHART.** I ask that the Committee appoint someone to carry this bill. This legislation was supported by the Joint Study Commission on Children and Families.

EXECUTIVE ACTION ON HB 159

Motion/Vote: **SEN. STEVE DOHERTY MOVED HB 159 BE CONCURRED IN. THE MOTION CARRIED UNANIMOUSLY.**

{Tape: 1; Side: B; Approx. Time Count: #38.3; Comments: 10:27 a.m.}

HEARING ON HB 203

Sponsor: **REP. ROYAL JOHNSON, HD 10, Billings**

Proponents:
- **Jean Whittinghill, Court Assessment Program, and Study Coordinator**
- **Hank Hudson, Administrator, Child Support Enforcement Division (CSED), Department of Public Health and Human Services (DPHHS)**
- **Jeff Sherlock, District Judge, Helena**
- **SEN. MIGNON WATERMAN, SD 26, Helena**
- **Robert Torres, President, Montana Chapter, National Association of Social Workers**
- **Mary Alice Cook, Independent Advocate for Children and Families and volunteer teacher, Montana Youth Home, Helena**
- **Karen Sedlock, Citizens Review Board, Montana Supreme Court**
- **Jennifer Bordy, Attorney, Bozeman**
- **Allen Cranford, Christian Scientist Churches in Montana**

Opponents: **Pam Bricker**

Opening Statement by Sponsor: **REP. ROYAL JOHNSON, HD 10, Billings.** This bill is the result of a lot of study by the Court Assessment Program via a $300,000 grant for a four year study of what's happening in the Courts now, and what they would like to see happen. I served on this study with lawyers, judges and citizens. We have changed the bill substantially to coordinate it with DPHHS and Department of Corrections regulations.

{Tape: 2; Side: A; Approx. Time Count: #00; Comments: 10:30 a.m.}

I believe this is the best effort to date on how we are dealing with youth detention and adult prisoners and coordination of these things. If you haven't read the bill, I'd ask that you do so, as it's very complicated and applied to coming years.

Proponents' Testimony: Jean Whittinghill, Court Assessment Program, and Study Coordinator. In 1994 the Montana Supreme Court Administration received this four-year federal grant to study how we're handling child abuse/neglect cases, and how to do this better, if necessary. So, during the past two years we have evaluated the system, including federal law and Indian child welfare (which makes up about 40 percent of Montana cases). Lincoln, Hill, Cascade and Lewis and Clark Counties were sites of in-depth studies.

Everyone on the study commission was in agreement with this legislation. The amendments are largely organizational and we worked with the Select Committee on Corrections on these. We inserted a 90-day time-line and made provision for one extension in the child abuse/neglect statute, as currently there are none. This way kids will not be stuck in "foster care limbo" awaiting a permanent plan hearing at 12 months.

{Tape: 2; Side: A; Approx. Time Count: #8.5; Comments: 10:37 a.m.}

Hank Hudson, Administrator, Child Support Enforcement Division (CSED), Department of Public Health and Human Services (DPHHS). I was a member of the Study Commission, and stand in support of the bill.

Jeff Sherlock, District Judge, Helena. We are pleased with the time-lines in the bill, as usually a small child is involved and can form other attachments, which are sometimes not healthy.

SEN. MIGNON WATERMAN, SD 26, Helena. I also served on the Court Assessment Commission, and the Families for Kids Advisory Board. Two years ago we discovered there were 400 kids in state custody for more than 2 years at a time, and about 600 kids were there for much too long. I believe the time-liens in this bill address this problem. Time is an eternity for a three-year-old. Studies show that if a child is in custody for more than 18 months, in all probability they will never return home. This legislation could give kids some permanency in their lives.

Robert Torres, President, Montana Chapter, National Association of Social Workers. We stand in strong support of the bill and urge its passage.

Mary Alice Cook, Independent Advocate for Children and Families and volunteer teacher, Montana Youth Home, Helena. These kids have great problems, and I strongly support this bill.

Karen Sedlock, Citizens Review Board, Montana Supreme Court. Many times we end up reviewing these cases. We strongly support this bill.

Jennifer Bordy, Attorney, Bozeman. I was also a licensed foster parent from 1988-1996. I am please with the Section pertaining

to the Citizens Review Board. I believe the burden of proof in Section 8 should be "beyond a reasonable doubt." In Section 13, we must make a change, as it's worded now it also covers statutory rape. This should not apply in cases such as where a 21-year-old and a 15-year-old want to raise their child together

{Tape: 2; Side: A; Approx. Time Count: #17; Comments: None.}

Allen Cranford, Christian Scientist Churches in Montana. I am asking that you consider an amendment to restore the practices of our religion on page 2 **(EXHIBITS #4 and #5)**. HB 129 contains this same subsection. This amendment would cost the state about $122,000 in lost federal money.

Californians successfully sued to stop the removal of spiritual healing language in their law. Montana's congressional delegation believes parents and Montana should makes their own decision on this issue.

Opponents' Testimony: **Pam Bricker.** In one family with a child who has a brain malfunction there were specific needs. The child cried abuse, and it resulted in the child being away from the family for 19 months. This child was drugged beyond the ability to function while in foster care. Psychologists said the parents and siblings were the ones in danger. The child has now been returned to the family, but DPHHS has not been to visit them.

These situations are more common than you may think. People tend to avoid DPHHS as much as possible in these situations. My own child was violent at times and was removed from my home while I was out of town at a conference. We were allowed no contact for a year, and I believe this was very damaging.

Questions From Committee Members and Responses: **VICE CHAIRMAN LORENTS GROSFIELD.** We had a special family appeals court bill which we talked about turning into a study of these court system. Would it be better to have a specialized court to deal with these issues? **Jean Whittinghill.** We talked about creating a family court system at the District Court level, and I believe there was a split consensus. We dropped the idea because the money was not available, but we are evaluating the role of special masters or magistrates. We could be a part of such, but could not take charge of it.

SEN. HALLIGAN. Would you address Mr. Cranford's amendment? **REP. ROYAL JOHNSON.** I believe he's done a good job with his amendment, but there was not enough clarity to make the Select Committee on Corrections add this to the law. I would leave this more in you hands, as I have no personal objections to it. **Anne Gilkey, DPHHS.** This amendment to the bottom of page 2 and the top of page 3 of the bill was before the Senate Public Health Committee in 1993, and this language is a compromise from that debate.

{Tape: 2; Side: A; Approx. Time Count: #37.1; Comments: 11:06 a.m.}

Section 2 (3)(b) would allow the agency to go in and intervene to save a child's life, if necessary. I'm not aware of this ever being used in Montana, but our law is exactly in line with what federal law is now.

VICE CHAIRMAN GROSFIELD. Page 4, line 3 doesn't say "life threatening". It says "substantial or imminent risk of harm". **Anne Gilkey.** You could strike "or" and we would not object.

SEN. REINY JABS. Was this amended by the Select Committee on Corrections or the House Judiciary Committee? **REP. ROYAL JOHNSON.** This was introduced in the Select Committee on Corrections, and some amendments were put on after the Committee invited other to give input. We tried to include parents and ordinary citizens in this, as there are problems in timing and handling of these cases. It's a compromise bill.

SEN. BRUCE CRIPPEN. If we adopt the Christian Scientist amendments to (3)(a)b and leave (3)(b) the same, would you object? **Anne Gilkey.** I'm not sure, but I don't think so.

{Tape: 2; Side: B; Approx. Time Count: #00; Comments: 11:14 a.m.}

SEN. CRIPPEN. You hear my question to Ms. Gilkey. Would you object to this proposal? **Allen Cranford.** We wanted the bill to consider two methods of care available and not make one substandard or secondary class.

SEN. CRIPPEN. Other religions practice non-medical health care, and this language could probably open the door to those kinds of folks. **Allen Cranford.** I hoped to just restore it to the language of pre-1993.

SEN. CRIPPEN. If the Department has this authority now even with tradition medicine, they'd have the authority in these alternative instances, as well. So, I would like to look at your amendments the way I've suggested.

Closing by Sponsor: **REP. JOHNSON.** I am asking the Committee to look carefully at the bill, and make any necessary changes. I tried to make parents primary and included from the beginning of the process.

{Tape: 2; Side: B; Approx. Time Count: #7.5; Comments: 11:20 a.m.}

EXECUTIVE ACTION ON HB 426

Discussion: **VICE CHAIRMAN GROSFIELD.** We have received information from the Montana Bankers Association in response to our questions **(EXHIBIT #6).** I have a little concern with

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 3-19-97
BILL NO. HB 203

Testimony to the Senate Judiciary Committee 3/19/97
From: Alan Cranford, 104 E. Main St., Suite 307, Bozeman, 59715, 585-2465

My name is Alan Cranford. I'm speaking on behalf of the members of the Christian Science churches in Montana. I live in Bozeman with my wife and daughter, who will be eight-years-old next week, as she keeps reminding me. I'm not speaking for or against the bill itself, but asking you to consider an amendment that would restore legal protections to the practice of our religion in the care for our children. I have also offered testimony on this amendment in a Public Health Committee hearing on HB 129, which contains the same subsection that we wish to amend in HB 203.

Before 1993, part of the subsection on Page 2, line 28 of HB 203 read as follows:

> **"(3) (a) 'Adequate health care' means any medical <u>or non medical remedial health</u> care, including the prevention, etc."**

In 1993 the phrase "non medical remedial health care" was removed. My amendment would restore that phrase.

Some of you may be aware that under the threat of losing about $122,000 in federal child abuse prevention funds, our state, along with some other states, was forced by the federal Department of Health and Human Services to remove accommodations for spiritual healing from the law. Since before Montana statehood, Christian Scientists have been successfully relying on prayer alone for the healing of minor as well as serious illnesses in their families.

The action by HHS boiled down to this: They were trying to fix a problem that didn't exist. The human services departments in our state and in other states saw no need to remove accommodations for spiritual healing until required to do so by administrators in Washington, who were acting against the law as determined by a Federal Court when California successfully sued to stop them. The Court found HHS "arbitrary and capricious." HHS was also acting against the intent of the U.S. Congress as it so voted in 1994 when it took action to stop HHS from threatening any more states. And HHS was acting against a religion that has a proven record of healing for over a hundred and twenty years. Some states refused to change their laws even though it meant the loss of federal funding. They took the position that removing such laws would not improve children's health and would interfere with parent's freely chosen method of care for their children.

Montana's congressional delegation voted in favor of stopping HHS, and I would like to read part of a letter from Senator Baucus. "I supported the bill, in part, because it prevented HHS from withholding [Child Abuse Prevention and Treatment Act] funds to states that accommodate spiritual treatment for medical conditions. . . . . I will work in the Senate Finance Committee during the welfare reform debate to make sure that states can make their own decisions about spiritual treatment, without unnecessary meddling by the Federal Government. And second, should the CAPTA program come before the full Senate to be reauthorized, I'll work to make sure states like ours receive the funds <u>and</u> make their own decisions."

You may be familiar with the fact that this, indeed, was the result of the CAPTA reauthorization in 1996. It says that, "Nothing in this Act shall be construed... (1) as establishing a Federal requirement that a parent or legal guardian provide a child any medial service or treatment against the religious beliefs of the parent or legal guardian."

CAPTA also includes a minimum requirement to "permit the child protective services system of the State to pursue any legal remedies ... to provide medical care or treatment for a child when such care or treatment is necessary to prevent or remedy serious harm to the child...."

We were grateful that the legislature in 1993 added an additional subsection (b), that in its first sentence, protects parents from being found abusive or neglectful if they rely on spiritual healing for their children. But protecting parents is not our greatest concern. The next sentence in the subsection allows the state to take our children away from us and force them to undergo medical treatment in the case of "imminent or substantial risk of harm", which could easily be defined as any harmful illness. I'm not aware of any case in which this has actually happened, but the potential is there. CAPTA uses the more restrictive term "serious harm" and I have used the CAPTA language in my amendment.

House Bill 203 asks us to consider the right question, "What is in the best interest of the child?" Our members care deeply for their children and want to provide them with the best of care without fearing that the government will impose medical procedures on them at a time when they need Christian Science treatment the most. When we are actively engaged in consecrated prayer, which requires our utmost attention and effort, we should not be distracted with the fear that the government may at any time interrupt our treatment. Medical procedures are not only contrary to parent's religious beliefs and practices, but are contrary to what the children themselves have known and trusted all their lives as an effective means of healing.

Traditional medicine doesn't offer any guarantees and yet the law passed in 1993 makes that assumption. These two different methods of healing have existed side by side for decades. All we're asking is that the law treat us equally, as it did before 1993. Before the department decides what to do in the best interest of the child, it should take into consideration the fact that not every citizen uses the same method of healing.

Does the legislature want the department to step into situations that do not involve neglect? We do not object to the department intervening in cases where the child is not being provided any care, but we don't believe that the law intends to define our spiritual treatment as a lack of care. My amendment would clarify this intent and restore our method of care to the definition of adequate care as it existed prior to 1993. Other language in the amendment borrows from CAPTA language and strengthens our protection.

Thank you for considering introducing our amendment.

HB203
3/19

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 3/19/97
BILL NO. HB203

Sen. Crippen

Christian Science Committee on Publication

for Montana

From: Alan Cranford, 406-585-2465

Number of pages to follow: 5

24

Please forward copies of the following faxed pages to the Chairman and members of the Senate Judiciary committee.

Thank you

First Bank Bldg., Suite 307, 104 E. Main Street, Bozeman, MT 59715
Phone and Fax (406) 585-2465

Christian Science Committee on Publication

for Montana

Fax

Date: 3/14/97

To: Senator Bruce Crippen
Chairman, Judiciary Committee
State Capitol, Helena

From: Alan Cranford,
Christian Science Committee on Publication
for Montana
Bozeman, MT
Fax and Phone: (406) 585-2465

Dear Senator Crippen,

I would like to ask for your help in amending a bill that is important to the members of the Christian Science churches in Montana. I have attached a letter explaining the opportunity we have in HB 203 to correct an action that was imposed by a federal agency on the 1993 legislature. The resulting change in state law weakened long-standing legal protections afforded to those who care for their families by spiritual means through prayer. HB 203 contains the provisions that were affected at that time, and I have included an amendment which would help restore those protections. The amendment also conforms state language more closely to that of the 1996 Child Abuse Prevention and Treatment Act.

I will testify at the hearing for this bill on March 19th, but I thought I would ask in advance if you or another Senator on your committee would be willing to sponsor our amendment. I contacted some members of the House about this issue when it was being considered there. They were sympathetic but no one committed to sponsoring the amendment. Please give me a call so I can more fully explain our request. I would be glad to meet briefly with you in Helena at a time convenient for you. Thank you.

First Bank Bldg., Suite 307, 104 E. Main Street, Bozeman, MT 59715
Phone and Fax (406) 585-2465

Christian Science Committee on Publication

for Montana

Senator Bruce Crippen
State Capitol
Helena, Montana

March 14, 1997

Dear Senator Crippen,

HB 203 presents the 55th legislature with an opportunity to reverse a federal mandate that was imposed on the 53rd legislature by administrators in the federal Department of Health and Human Services. HHS threatened to withhold $122,512 in child abuse prevention funding if Montana did not delete from its laws the option of "non medical remedial health care" as an adequate method of care for a child. This provision had stood for many years as protection to fellow members of my church who rely exclusively on prayer for healing in their families and have done so successfully for many generations. The deletion of this wording, as found on page 2 line 28 of HB 203, was agreed to by 1993 legislature, which, thankfully, was able to negotiate the addition of a sentence in the next subsection that provided some protection for religious beliefs. In 1994, HHS was prevented from further interference in state laws by an act of the United States Congress.

As the representative of the Christian Science churches in Montana, I'm asking you to amend HB203 to correct this erosion of legal protections while at the same time preserving federal funding. For well over one hundred years, Christian Scientists have successfully relied on prayer for the healing of minor as well as serious illnesses in their families. As you can imagine, we were sorry to see this unneeded change in a law which had been beneficial to the state and its citizens for many years. We were grateful to legislators who were able to have a sentence included in the statute which kept us from being defined as child abusers because of our religious practice. However, the very next sentence seems to impose further restrictions. Our members care deeply for their children and want to provide them with the best of care without fearing that the government will impose medical procedures at a time when they need Christian Science treatment the most.

Montana was not the only state targeted by HHS. While some states changed their laws, California successfully sued to prevent HHS from imposing this kind of restrictive rule on its citizens. Some other states considered the practice of spiritual healing such an important freedom with proven effectiveness that they refused to change their laws even though it meant the loss of federal funding.

And last year, Congress renewed the Child Abuse Prevention and Treatment Act (CAPTA) with language that prohibits HHS from requiring that a child be given medical treatment against the religious beliefs of parents or legal guardians. CAPTA does require states to have, at a minimum, laws that allow the child protective services to pursue any legal remedies, including providing medical care when necessary to avoid serious harm to a child. We have no quarrel with the state intervening to protect neglected children as long as our spiritual treatment is not confused with neglect and is protected as an option available to remedy serious situations. We have included such wording in our amendment. For a government to impose a single method of health care on all citizens, is not truly protective of children's health, which is what we all want to do. We have found Christian healing to be effective in keeping our families healthy.

Our proposed amendment to HB 203 restores the definition of adequate health care to the way it was in the Montana Code before 1993. The attached amendment also adopts the new language found in CAPTA. Thank you for considering it. I have also attached sections from CAPTA and the Congressional Record.

Sincerely,

Alan Cranford

Alan Cranford
Committee on Publication for Montana

cc: Judiciary Committee members

First Bank Bldg., Suite 307, 104 E. Main Street, Bozeman, MT 59715
Phone and Fax (406) 585-2465

Proposed amendment to HB 203:

1. On page 2 of the bill, substitute the following amendment starting on line 28:

"(3) (a) 'Adequate health care' means any medical or non medical remedial health care, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, ~~due to~~ in accordance with religious beliefs, ~~does not provide medical care for a child~~ relies solely upon spiritual means rather than medical treatment for a child. ~~However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent or substantial risk of harm to the child.~~"

2. Move the second sentence of subsection (3) (b) into its own new subsection (3) (c) and add a sentence from the CAPTA language. Change subsection (c) to (d)

" (3) (c) ~~However, t~~This chapter may not be construed to limit the administrative or judicial authority of the state to ensure that ~~medical~~ adequate health care is provided to the child when there is imminent or substantial risk of serious harm to the child. A parent or legal guardian shall not be required to provide a child any medical service or treatment against the religious beliefs of the parent or legal guardian.

~~(c)~~(d) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute harm to a child's health or welfare."

S 919 Sen. Coats

Child Abuse Prevention and Treatment Act Amendments of 1996

SEC. 112. RULE OF CONSTRUCTION.

Title I of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 et seq.) is amended by adding at the end the following new section:

"SEC. 115. RULE OF CONSTRUCTION.

"(a) IN GENERAL.--Nothing in this Act shall be construed--

"(1) as establishing a Federal requirement that a parent or legal guardian provide a child any medical service or treatment against the religious beliefs of the parent or legal guardian; and

"(2) to require that a State find, or to prohibit a State from finding, abuse or neglect in cases in which a parent or legal guardian relies solely or partially upon spiritual means rather than medical treatment, in accordance with the religious beliefs of the parent or legal guardian.

"(b) STATE REQUIREMENT.--Notwithstanding subsection (a), a State shall, at a minimum, have in place authority under State law to permit the child protective services system of the State to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, to provide medical care or treatment for a child when such care or treatment is necessary to prevent or remedy serious harm to the child, or to prevent the withholding of medically indicated treatment from children with life threatening conditions. Except with respect to the withholding of medically indicated treatments from disabled infants with life threatening conditions, case by case determinations concerning the exercise of the authority of this subsection shall be within the sole discretion of the State.".

September 27, 1996

Mr. President, it is my understanding that under CAPTA, States have been allowed to exempt parents from prosecution on grounds of medical neglect if the parent was employing alternative means of healing as part of the parent's religious practice. CAPTA also has required States to have procedure in place to report, investigate and intervene in situations where children are being denied medical care needed to prevent harm.

Mr. COATS. That is correct. The two provisions you have described have caused problems for some States. The Department of Health and Human Services has moved to disqualify certain States from CAPTA funding based on the State's accommodation of the religious treatment in lieu of medical treatment.

Mr. DODD. And it is my further understanding that we have clarified that issue in the Rule of Construction in the bill before us.

Mr. COATS. Yes, we have. After a very lengthy negotiation we have reached a compromise which will both protect children in need of medical intervention while ensuring that the first amendment rights of parents to practice their religion are not infringed upon. Under this bill, no parent or legal guardian is required to provide a child with medical service or treatment against their religious beliefs, nor is any State required to find, or prohibited from finding, abuse or neglect cases where the parent or guardian relied solely or partially upon spiritual means rather than medical treatment in accordance with their religious beliefs.

Mr. DODD. Does the bill address the State's authority to pursue any legal remedies necessary to provide medical care or treatment when such care or treatment is necessary to prevent or remedy serious harm to the child, or to prevent the withholding of medically indicated treatment from children with life-threatening conditions?

Mr. COATS. Yes it does. In addition, the bill gives States sole discretion over case-by-case determinations relating to the exercise of authority in this area. No State is foreclosed from considering parents use of treatment by spiritual means. No State is required to prosecute parents in this area. But every State must have in place the authority to intervene to protect children in need. Let me also state that nothing in this bill should be interpreted as discouraging the reporting of suspected incidences of medical neglect to child protection services, where warranted.

Mr. DODD. I also see that a new section has been added that requires the States to include in their State laws, as statutory grounds for the termination of parental rights, convictions of parents for certain specified crimes against children. It also eliminates a Federal mandate that States must seek reunification of the convicted parent with surviving children. Given the crimes that have been specified—murder, voluntary manslaughter, and felony assault—it appears that what we are addressing is a parent who deliberately takes the life or seriously injures his child.

Mr. COATS. That is correct. This section is intended to give the States flexibility in this area by not requiring them to seek to reunify a parent convicted of a serious and violent crime against his child, with that surviving child or other children. States may still seek to reunify the family but will no longer be required to do so by Federal law. Second, the bill provides that these very serious crimes should be grounds in State law for the termination of parental rights. Any decision, however, to terminate parental rights, even in these cases, is entirely a State issue and remains so under this bill.

Mr. DODD. Would States be allowed to consider a parent's motive when deciding to terminate parental rights or to seek reunification of that family? And could this include sincerely held religious beliefs of the parent?

Mr. COATS. Yes. Since this is entirely a matter of State law, States are free to consider whatever mitigating circumstances they would like.

71-RJ.

MONTANA SENATE
1997 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 3-19-97

NAME	PRESENT	ABSENT	EXCUSED
SUE BARTLETT	✓		
AL BISHOP	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
WALT MC NUTT	✓		
LORENTS GROSFIELD, VICE CHAIRMAN 10:25 present	✓		
BRUCE CRIPPEN, CHAIRMAN present @ 10:10 am	✓		

SEN:1995
wp.rollcall.man
CS-09

DATE 3-19-97

~~SENATE~~ COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 231, HB 159, HB 203

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
Vern Anick	myself	231	✓	
KERRY N. NEWCOMER	SELF - STATE BAR - DOM. REL. JUDICIAL COMM	231	✓	
Kyle Cunningham	self - State Bar Dom Rel. S. Comm	231	✓	
Jennifer Bardy	self - MT Trial Lawyers	231	✓	
Russell LaVigne	MT Low Income Coalition MT Welfare Action Coalition	231		✓
Corbin Howard	Self	231	X	
Robert Tamilia	Self	231	X	
J Sherlock		203	—	
Jean Whittinghill	Ct. Assessment Prog	203	X	
Ann Gilkey	DPHHS	203	X	
R Reuter	DRHHS	203	+	
RTorres	MT ch. NASW	203	✓	
Alan Crawford	Christian Science church	203	Amend	
MARY ALICE COOK	ADV for Children & Families	231 203 159	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

SEN. HOLDEN. Would you explain #35 on page 5 of the green bill? **Susan Fox.** This was originally called family assessment, but was changed to youth assessment.

SEN. HOLDEN. Would you comment specifically on (d)(i)? Are we saying youth assessment is upon request? **Susan Fox.** This amendment would be placed in 41-5-301, MCA - the preliminary investigation and disposition section - which means they're already in the youth court process because of an offense. Families could require, however, that both families and youth would have to agree.

{Tape: 1; Side: B; Approx. Time Count: #13.3; Comments: 11:07 a.m.}

Closing by Sponsor: **SEN. SPRAGUE.** We haven't addressed the Youth Court Act for 20 years, and we have a responsibility to do something to better the situation.

EXECUTIVE ACTION ON SB 48

Motion/Vote: **SEN. ESTRADA MOVED TO REJECT THE HOUSE AMENDMENTS TO SB 48. THE MOTION CARRIED UNANIMOUSLY.**

EXECUTIVE ACTION ON HB 203

Amendments: Alan Cranford amendments **(EXHIBIT #3)**

Motion: **SEN. ESTRADA MOVED TO ADOPT ALAN CRANFORD'S AMENDMENT TO ADDRESS SPIRITUAL TREATMENT THROUGH PRAYER.**

{Tape: 1; Side: b; Approx. Time Count: #16.6; Comments: None}

Discussion: **VICE CHAIRMAN LORENTS GROSFIELD.** I would like to have "serious" inserted prior to "harm" in the following sentence.

SEN. HALLIGAN. Give me an example of the State intervening in the past few years. **Alan Cranford.** No incidents have occurred, but it is a possibility.

SEN. HALLIGAN. Could the state intervene if I were part of a Christian Science church and my child had leukemia, and wasn't responding to prayer? **Alan Cranford.** The State could still intervene under these amendments. We're trying to restore adequate health care to the same definition it had in 1993.

SEN. HALLIGAN. You'd have to go to court to prove your record of success. Under (b), either Reverend Joe Healer or a Christian Scientist could be forced to give up a child. You take a child whose bones are not healing to a doctor, right? **Alan Cranford.** That is correct.

{Tape: 1; Side: B; Approx. Time Count: #29.5; Comments: None}

CHAIRMAN CRIPPEN. As I mentioned to you previously, I think the concern you have is how to take these people into account. The answer is that you don't, as they have every right in the world to do that. On the other hand I don't know if that's going to harm anything because all you're doing is adequate health care. Of course, you or Reverend Joe Healer would have to go to court to prove your record of success, and that might be difficult to do. But under (b) either one of you might be forced to give up a child, especially for a child with cancer or a bone that's not healing right. Any church is going to get caught up without this language.

SEN. REINY JABS. You mentioned Section (b); what does that take care of? **Alan Cranford.** The first page of Section 42-3-102, MCA deals with the definition, and Mr. Cranford wants to put back in "adequate health care also includes spiritual treatment through prayer alone that has a reasonable proven record of success". His church has been around for a long time, and believes they can document this, so I guess we have to assume that they can. The Christian Scientist Church is distinguished from Reverend Joe Healer holding a meeting on the edge of town, so I don't see a problem.

SEN. HALLIGAN. I took kids away from people who hated the system in general, and am concerned that they'd be brought in under this language. The House didn't adopt this, and I want a valid public policy reason, and we don't have one here. **Bob Torres, National Association of Social Workers.** We worked in the task force on this issue. The amendments were faxed and no one was there at the meeting, so we decided not to include them.

SEN. ESTRADA. Does this amendment open the door to any religions to tell law enforcement they can heal thorough power of prayer? I admire Mr. Cranford and wish I had his faith, but am worried about children outside of Christian Science.

SEN. WALTER MCNUTT. I am concerned about opening this up to these other groups, so I oppose the amendment.

SEN. DOHERTY. Part of the problem is in "proven record of success" and what a legitimate religion is. We need to be very careful of this.

Vote: **SEN. ESTRADA'S MOTION TO ADOPT THE CRANFORD AMENDMENTS FAILED WITH ALL MEMBERS VOTING NO EXCEPT SENATORS CRIPPEN AND DOHERTY.**

Motion/Vote: **SEN. HALLIGAN MOVED TO STRIKE "or" BEFORE "substantial" ON PAGE 3, LINE 4 OF THE BILL. THE MOTION CARRIED UNANIMOUSLY.**

Motion: **VICE CHAIRMAN GROSFIELD MOVED TO INSERT "SERIOUS" ON PAGE 2, LINE 4, BEFORE "HARM".**

Discussion: **SEN. HALLIGAN.** At what point does it become serious? There are stages of this, and it could interfere with a preventive approach.

Vote: **VICE CHAIRMAN GROSFIELD'S MOTION TO AMEND CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SENATORS JABS, HALLIGAN, AND DOHERTY WHO VOTED NO.**

Motion/Vote: **VICE CHAIRMAN GROSFIELD MOVED TO CHANGE 41-3-1011 TO 41-3-1010, A TECHNICAL CORRECTION ON PAGE 13, LINE 10. THE MOTION CARRIED UNANIMOUSLY.**

Motion/Vote: **SEN. HALLIGAN MOVED HB 203 BE CONCURRED IN AS AMENDED. THE MOTION CARRIED UNANIMOUSLY.**

EXECUTIVE ACTION ON HB 231

Discussion: **VICE CHAIRMAN GROSFIELD.** How is the child going to trigger periodic review of the parenting plan? **SEN. HALLIGAN.** Through a lay person as guardian ad litem or the Court. Jennifer Bordy told us she wanted averages in child support extinguished as part of final planning. Also, it was brought up that the fee was too high.

SEN. DOHERTY. There is a fairly high threshold now, and this would change in the bill. But, given that spite exists, are we increasing the possibility of people requesting a change out of spite? **SEN. HALLIGAN.** In the case in Sanders County where there was a change of custody, a change of circumstances in addition to serious endangerment of the child's health or welfare, it is a very heavy standard to change custody unless parents consent. This repeals that from the law, as it doesn't reflect the reality. For example, as boys become teenagers, they mostly want to go live with dad. The bill does make it easier for the parents to bring an action for a custody change, but it still has to be in front of a judge.

{Tape: 2; Side: A; Approx. Time Count: #11.5; Comments: None}

SEN. ESTRADA. I talked with Judges Larson and Fagg who support the bill, as well as **SEN. HALLIGAN.**

SEN. HALLIGAN. I am asking for time to get together with Valencia Lane to produce an amendment.

SEN. JABS. Do you want the language on page 24, line 15 removed? **SEN. HALLIGAN.** Yes, as dads and moms will be sharing parenting a lot more.

SEN. MCNUTT. How often do you encounter serious endangerment?

Motion: **SEN. ESTRADA MOVED HB 231 BE CONCURRED IN.**

Alan Cranford, 104 E. Main St., Suite 307, Bozeman, 59715 585-2465

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. Ex 3
DATE 3-25-77
BILL NO. HB 203

Proposed amendment to HB 203:

On page 2 of the bill, substitute the following amendment starting on line 28:

"(3) (a) 'Adequate health care' means any medical care<u>or spiritual treatment through prayer alone that has a reasonable, proven record of success</u>, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law."

Wording similar to this amendment is found in MCA 50-4-504 (5) which reads as follows: ... religious groups relying solely on spiritual means, through prayer, for healing.

SENATE STANDING COMMITTEE REPORT

March 25, 1997

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill 203 (third reading copy -- blue), respectfully report that House Bill 203 be amended as follows and as so amended be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Page 3, line 4.
Following: "imminent"
Strike: "or"
Following: "risk of"
Insert: "serious"

2. Page 13, line 10.
Strike: "41-3-1011"
Insert: "41-3-1010"

-END-

Amd. Coord.
Sec. of Senate

Senator Carrying Bill

651600SC.SRF